IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.7665 OF 2007

Smt.Vijaya Balkrishna Malegaonkar
and Ors. .Petitioners

Versus

Mr.Ramesh Ganesh Karmarkar
and anr. ....Respondents

Amit Borkar for the petitioners.
A.P.Vanarse for respondent no.1 and 2.

CORAM: S.C.DHARMADHIKARI, J.

5th December, 2007.

P.C. :

1. This Writ Petition is directed against an order passed by the Lower Appellate Court confirming that of the Trial Court dismissing an application for setting aside the ex-parte decree of eviction passed against the present petitioner

2. With the assistance of Mr.Borkar and Mr.Vanarse, I

have perused the impugned order. The Lower Appellate Court had referred to the fact that the application of the present petitioner had clearly stated about the ailments that she is suffering from, so also, the fact she was regular in attending the court. The petitioners could not remain present on the relevant date because of the fact that the Clerk of the Advocate did not inform the date and time. The lower Appellate Court has referred to the fact that the petitioner/original defendant remained absent on 6.4.2003, 2.5.2003 and the suit was decreed on the adjourned date i.e. on 10.6.2003. In such circumstances and when a valuable opportunity to cross-examine the plaintiff on the case having been denied, interest of justice would be subserved if in the peculiar facts of this case, the orders under challenge are set aside subject to following conditions :-

(a)_ that the petitioners shall deposit in the Trial Court all arrears of rent and costs quantified at Rs.2500/- within a period of four weeks from today.

(b)_ that they shall not alienate, encumber, part with possession or create any third party rights in the suit premises in any manner whatsoever.

(c) that they shall continue to deposit in the Trial court the monthly rent/compensation till the disposal of the suit.

(d) that they shall co-operate in expeditious disposal of the suit by not seeking unnecessary adjournments.

3. Parties to appear before the trial court on 18.12.2007 at 11 a.m. and the Trial Court shall restore the suit to the file provided the petitioners advocate remains present before him on that date and agrees to cross-examine the plaintiffs/their witness on the date and time scheduled by the Trial Court. The Trial Court to thereafter dispose off the subject suit considering the fact that the parties therein are senior citizens, as expeditiously as possible and within a period of six months from the date of appearance of parties. Petition allowed in the above terms.

sd/-

****